

STATE OF VERMONT  
PUBLIC SERVICE BOARD

CPG #NM-991

Application of David Blittersdorf for a certificate     )  
of public good for an interconnected group net     )  
metered photovoltaic system     )

Order entered: 10/21/2010

**I. INTRODUCTION**

In this proposal for decision, I recommend that the Vermont Public Service Board ("Board") deny the application filed by David Blittersdorf pursuant to 30 V.S.A. 219a for a Certificate of Public Good authorizing the construction and operation of a net metering project to be located in Hinesburg, Vermont.

**II. BACKGROUND**

This case involves an application originally filed by David Blittersdorf ("Applicant") on May 6, 2010, requesting a certificate of public good ("CPG") pursuant to 30 V.S.A. §§ 219a and 248 and Vermont Public Service Board ("Board") Rule 5.100 for a group net metering system. The proposed project consists of 36 pole-mounted photovoltaic arrays, with a system-rated capacity of 143.6 kW AC, to be located on property owned by the Applicant in Hinesburg, Vermont. The Application states that the proposed project would be located at the same address, in the same field, and connected to the same transformer as an existing 147.6 kW AC capacity group net metering system (CPG #NM-702), owned by the Applicant.<sup>1</sup>

On May 24, 2010, the Board issued a memorandum to the Applicant and the Vermont Department of Public Service ("Department") requesting comments as to whether the proposed project is consistent with the statutory 250 kW AC capacity limit regarding net-metered systems.<sup>2</sup>

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1. See CPG NM-702, Order issued September 2, 2009.

2. Pursuant to 30 V.S.A. § 219a(a)(3)(A) and PSB Rule 5.102(H), "net metering system" means a facility for generation of electricity that is of no more than 250 kW (AC) capacity.

On June 7, 2010, the Department filed comments in response to the memorandum. The Department argues that, while it is a "difficult call," the proposed and existing projects "should be counted as one project and as such would exceed the 250 kW cap imposed by 30 V.S.A. § 219a if the new project was built as proposed."<sup>3</sup>

On July 12, 2010, the Applicant filed comments in response to the memorandum. The Applicant asserts that because the existing project at this same location is owned by a separate entity, Wind NRG Partners, LLC, and serves a different net metering group, the newly proposed project, owned by Earth NRG Services, LLC, should be recognized as a separate project with respect to the capacity limits. In addition, the Applicant contends that "[w]hile these facilities are both fed from the same GMP transformer, we see no logical reason to incur significant additional costs to install a second 3-phase transformer, pole and line from the GMP service at the road which would be parallel to the existing."

No other comments in response to the memorandum have been filed with the Board.

### **III. FINDINGS**

Based upon the information in the record, including the application and its accompanying documents, and pursuant to 30 V.S.A. § 8, I hereby make the following findings in this matter.

1. On August 11, 2009, the Board received a group net metering application signed by David Blittersdorf which identifies the applicant as David Blittersdorf - Wind NRG Partners, LLC. CPG NM-702 Application at Sections 1 and 3.

2. On September 2, 2009, the Board issued an Order and CPG (CPG NM-702) approving a group net-metered system consisting of 36 pole-mounted solar tracking photovoltaic arrays with a system-rated capacity of 147.6 k W AC located at 445 Mechanicsville Road in Hinesburg, Vermont. *See* CPG NM-702.

3. The group members listed in the CPG NM-702 application include NRG Systems, Inc. and Earth Turbines, Inc. The application identifies David Blittersdorf as the person designated to receive billing and other communications on behalf of the group. The application also states that

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3. Department comments, 6/7/10 at 1-2.

the companies in the group, and the property on which the system is located, are owned by David and Jan Blittersdorf. CPG NM-702 Application at Section 7 attachment.

4. On May 6, 2010, the Board received a group net metering application signed by David Blittersdorf which identifies David Blittersdorf as the applicant. CPG NM-991 Application at Sections 1 and 3.

5. The proposed project would be located on property owned by the Applicant at 445 Mechanicsville Road in Hinesburg, Vermont. The proposed photovoltaic system consists of 36 pole-mounted solar tracking photovoltaic arrays installed adjacent to the existing permitted system in a field on the Applicant's property. CPG NM-991 Application at Sections 1, 4 and attachments.

6. The proposed project has a system-rated power output of 143.6 kW AC. The facility would be interconnected with the Green Mountain Power Corporation ("GMP") electrical distribution system using the same transformer as the existing array. CPG NM-991 Application at Section 4 and attachments.

7. The group members identified in the application are David Blittersdorf, Wake Robin, Spruce Mountain Design, and John Kerr. The application identifies David Blittersdorf as the person designated to receive billing and other communications on behalf of the group. The application also states that David Blittersdorf owns Earth NRG Services, LLC, which will be the owner of the solar trackers comprising the net metering system. CPG NM-991 Application at Section 7 attachments.

#### **IV. DISCUSSION & CONCLUSION**

The application for the existing project (CPG NM-702) identifies David Blittersdorf - Wind NRG Partners, LLC, as the applicant and is signed by Mr. Blittersdorf. The application for the newly proposed project identifies Mr. Blittersdorf as the applicant and is signed by Mr. Blittersdorf. Both applications include the same service address and both identify Mr. Blittersdorf as an owner of the property on which the projects will be located.<sup>4</sup> Both projects involve a group net metering arrangement whereby the generation from the projects would be measured by a new electric meter installed at the site with all production netted against the

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4. The application for the existing project lists Jan Blittersdorf as a co-owner of the property, while the application for the new project lists only Mr. Blittersdorf.

accounts of the various group members on an aggregate bill. Neither project would be physically connected to any of the group member meters and all generation would go directly into GMP's system. Both applications identify David Blittersdorf as the person responsible for all communications between the group and the serving utility including receiving and paying bills related to the group. The site plans, consisting of satellite images, submitted with each application indicate that both projects would be located adjacent to each other in the same open field. Based on the proximity of the projects shown in the site plans, the projects would appear as one large facility to the average viewer. In addition, while the access routes to the projects are not identified on the site plans, given the proximity of the projects and their location in the same field, access to the projects would likely be shared. The projects would also share a common interconnection to the utility grid.

The Applicant argues that because the generation facilities are owned by separate companies, they should be viewed as separate systems with regard to the statutory cap. I find this argument unconvincing. First the applications clearly indicate that both Wind NRG Partners, LLC and Earth NRG Services, LLC are owned by Mr. Blittersdorf.<sup>5</sup> Secondly, under 30 V.S.A. § 219a(a)(3) a net metering system is clearly defined as:

(A) a facility for generation of electricity that is of no more than 250 kilowatts (AC) capacity;

(B) operates in parallel with facilities of the electric distribution system;

(C) is intended primarily to offset part or all of the customer's own electricity requirements;

(D) is located on the customer's premises; and

(E)(I) employs a renewable energy source as defined in subdivision 8002(2) of this title; . . .

A net metering "customer" is defined under § 219a(a)(1) as the "retail electric consumer who uses a net metering system." The capacity limits clearly apply to the system used by the net metering customer or applicant. Mr. Blittersdorf has identified himself as the net metering customer on both the application forms for the existing project and the newly proposed project;

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5. See NM-991 Application at Section 7 attachment; NM-702 at Section 7 attachment.

therefore, it is appropriate to view both projects as one system used by the same customer and count both projects against the system capacity limit.

As the Department contends:

If we now said that an owner can have many projects in close proximity, having a common infrastructure and connection to the electrical grid, we have essentially negated the law as set down by the Vermont General Assembly. When construing a statute we should read a statute in such a way as to give effect to all its parts if possible. In this case, that is possible and necessary. The Department believes that allowing serial projects by one owner sharing common infrastructure and connection to the electrical grid to exceed the 250 kW cap, would skirt the intent and plain meaning of § 219a(a)(3).<sup>6</sup>

I agree with the Department's reasoning and statutory interpretation. Pursuant to § 219a(c)(1) the Board may waive the statutory review criteria for net-metered projects that would normally apply to generation facilities pursuant to 30 V.S.A. § 248. The statutory capacity limit ensures that these projects will have limited impacts, thereby, allowing the Board to conditionally waive criteria that would otherwise apply to these smaller projects. The conditional waiver of criteria has allowed the Board to simplify the application and review process for net-metered projects pursuant to 30 V.S. A. § 219a(c)(3). In this case, the Applicant argues that the projects are owned by different entities and serve different virtual groups, and, therefore, they should be reviewed as separate smaller projects. However, the existing project and the proposed project are in close proximity and share common infrastructure and interconnection; therefore, it is more appropriate to view the newly proposed project as an expansion of the existing project with commensurate impacts on the surrounding environment and electric system. Allowing two adjacent 150 kW projects to be reviewed under a process designed to apply to smaller systems because they are filed as separate applications would be inconsistent with the intent of § 219a. Accordingly, the project should be reviewed under the process created for these larger projects under § 248 and not under the simplified process reserved for smaller net-metered projects.

Furthermore, this statutory interpretation is consistent with the renewable energy definitions included under the sustainably priced energy enterprise development "SPEED" program under 30 V.S.A. § 8002. Similar to the net metering program, the SPEED program involves renewable energy generation facilities of limited size. Pursuant to 30 V.S.A. § 8002(12), "[a] group of newly constructed facilities, such as wind turbines, shall be considered

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6. Department comments at 1-2.

one plant if the group is part of the same project and uses common equipment and infrastructure such as roads, control facilities, and connections to the electric grid." While § 8002(12) does not directly apply to net metering systems, it provides useful guidance in determining whether a generation project should be considered a stand-alone facility or whether it should be considered part of a larger facility.

The proposed system with a capacity of 143.6 kW AC on a stand-alone basis would qualify as a net-metered system under the statutory definition. The proposed system would also have its own meter, utility account and net metering group. However, the system as proposed would be located on the same property as, and adjacent to, an existing 147.6 kW AC capacity system that is also owned by the Applicant, and would also share a transformer and a common point of interconnection to the electric grid. Because the project as proposed would share a common location, infrastructure and connection to the grid, I conclude that it is appropriate to consider the proposed project as an addition to the existing facility and not as a stand-alone facility. Even if the Applicant were to install a separate utility connection for the newly proposed project as suggested in his comments, the projects would still share a common location and infrastructure. Viewed as one combined system, the total capacity of the system, 291.2 kW AC, would exceed the statutory limit for net-metered systems and, therefore, cannot qualify as a net metered project. Therefore, I recommend that the Applicant's application for net metering be denied.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 9th day of August, 2010.

s/ Gregg Faber

Gregg Faber  
Hearing Officer

## **V. BOARD DISCUSSION**

### **Summary**

On September 15, 2010, the Applicant filed comments in response to the Hearing Officer's Proposal for Decision ("PFD"). The comments urge the Board to reject the recommendation of the Hearing Officer in the PFD and approve the application for a CPG.

On September 16, 2010, the Department filed comments in support of the Hearing Officer's recommendation in the PFD.

After considering the written comments, and based on our review of the evidence, we accept the recommendation of the Hearing Officer in the PFD and deny the Applicant's request for a CPG for the net metering project, pursuant to 30 V.S.A §§ 219a and 248.

### **Discussion**

The Applicant argues that it would be "arbitrary and capricious" for the Board to accept the Hearing Officers' recommendation "because that recommendation has no basis in the governing statute and Board rules."<sup>7</sup> The Applicant contends that the Board should be "mindful that the Legislature has recently directed the Board to *expand* the scope of the net metering program" pursuant to 30 V. S.A. 219b. The Applicant acknowledges that the proposed project will be constructed adjacent to an existing net metering system on the Applicant's property. However, the Applicant asserts that the Board should consider the proposed project as separate from the existing facility because the two facilities "will have separate meters and accounts for group net metering, and the group members are different."<sup>8</sup> The Applicant argues that neither the statutes nor Board Rules prohibit separate facilities from being sited on the same property or require that group net metered projects with group members in common should be viewed collectively with regard to capacity limits. The Applicant also contends that there is no reason to believe that "the proposed project might raise an issue under one or more of the conditionally waived § 248 criteria due to its proximity to the existing facility." Finally, the Applicant asserts that the Board "has no statutory authority" to apply the definition of what constitutes a single facility with regard to SPEED projects, under 30 V.S.A. § 8002(12), to a net metered facility

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7. Applicant's comments on the PFD at 1.

8. Applicant's comments at 2-3

"where it would serve only to squelch the development of net metering systems for no good reason and contrary to legislative intent."<sup>9</sup>

The Department agrees with the Hearing Officer's recommendation to deny the CPG application. The Department argues that the "decision is well reasoned and complies with the law and Board Rules."<sup>10</sup> The Department contends that while the Legislature has expanded the scope of the net metering program over time there remain "parameters in place as to what kind of systems will qualify as a net metered system." The proposed facility, the Department contends, "will share infrastructure, connection to the grid, property, ownership and customers with another project on the same tract of land." Because the combined total of the two facilities exceeds the statutory capacity limit, the Department contends, there is no need to "look to a public policy rationale, the Legislature has provided the rule and it should be followed." Finally, the Department states:

To allow serial projects by one owner, sharing common infrastructure, connection to the grid, customers and land, to exceed the statutory limit would be twisting the plain meaning of the law and make the law as it stands today totally meaningless.

We agree with the Hearing Officer and the Department that the proposed facility is properly viewed as an expansion of the existing facility and not as a separate net metering project. The proposed project does not qualify for net metering for the fundamental reason that it would exceed the 250 kW size limitation established in the net metering statute. As the Department correctly observes, to allow multiple net metering projects on the same premises with common infrastructure and a common interconnection would negate the statutory cap on the size of net metering projects. To accept the Applicant's reasoning would allow any net metering customer to construct a net metering system – whether a group or individual system<sup>11</sup> –

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9. Applicant's comments at 4.

10. Department comments on the PFD at 1.

11. The Applicant's reliance on the differences in membership between the proposed and the preexisting net metering groups is unavailing. The statutory definition of "net metering system" is the same for individual and group systems, and includes the requirement that the system "is located on the customer's premises." 30 V.S.A. § 219a(a)(3)(D). Here, the applications for both the existing and the new projects were submitted by the same Applicant, and the new and the preexisting projects would both be located, adjacently, on the Applicant's premises. Furthermore, it is not unusual for the output of electric generation projects to be divided among different purchasers (for example, as with the McNeil generation facility in Burlington). In our review of generation facilities under 30 V.S.A. § 248, allocation of output of a generation facility among a number of purchasers would not result in a segmented review of the facility. Thus, the differences in membership between the two net metering groups involved here are not controlling for purposes of

unconstrained by the statutory size limitation; the customer could simply claim that the system is a number of separate systems notwithstanding common infrastructure and interconnection facilities. Allowing such piecemeal development of a net metering system greater than 250 kW would violate the clear statutory limitation on the size of net metering systems.

We also disagree with the Applicant's contention that denying this application will somehow "squench" renewable energy development contrary to legislative intent. The Board has simplified the application process for net metered generation projects pursuant to § 219a(c). The Board has also waived many of the § 248 criteria that would normally apply to generation projects for net metered generation facilities. The simplified review and waiver of criteria for these projects is, in large part, predicated upon the relatively small size and commensurately smaller impacts of net metered projects which are subject to a statutory capacity limit set by the Legislature. Allowing serial projects that in aggregate exceed the statutory 250 kW limit to be considered as separate facilities would be contrary to legislative intent of § 219a. The Applicant correctly notes that no party has shown that the project raises an issue under § 248. However, our decision is not based on the potential adverse impacts of the project. Our decision to deny the net metering application is based on the fact that the expanded net metering system exceeds the statutory capacity limit applicable to net metering systems and is, therefore, not eligible to take advantage of this simplified review process. We conclude, along with the Hearing Officer, that projects that exceed the statutory capacity limit for net metering should be reviewed under the requirements applicable to those projects. If the Applicant believes that this result hinders the development of renewable energy facilities in Vermont, the proper avenue for relief is to seek legislative amendment to the statutory limitation.

As for the Applicant's contention that the Hearing Officer has inappropriately applied to this net metering project a definition from the SPEED statute, the Applicant misreads the PFD. The PFD explicitly acknowledges that the SPEED statute does not directly apply, but notes that the recommended decision is consistent with the statutory definitions contained in § 8002(12) that govern essentially the same types of renewable energy facilities as those encompassed within net metering projects under § 219a(a)(3). Consistency between statutory provisions that address similar regulatory programs is a desirable and not inappropriate outcome, and thus we see no error by the Hearing Officer.

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11. (...continued)  
determining whether the proposed project is a separate net metering system.

Finally, contrary to the Applicant's claim, we have in fact implemented the legislative directive of 30 V.S.A. § 219b. In 2007, pursuant to § 219b, the Board revised Rule 5.100 to expand the scope of the net metering program.<sup>12</sup> The Rule was subsequently amended in 2009 to further expand the scope of the program consistent with statutory revisions. While Board Rule 5.100 has been revised to expand the scope of the net metering program, it has not been modified (nor could it have been) to allow net metering projects that exceed the statutory 250 kW limitation.

Based on all of the above, we conclude that because the net metering application for the proposed project exceeds the statutory capacity limit, it does not qualify for net metering and is, accordingly, denied.

#### **V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Findings, Conclusion and recommendation of the Hearing Officer are adopted.
2. The net metering application submitted by David Blittersdorf, on May 6, 2010, is denied.

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12. The Rule revision expanded the net metering regulations to: allow for group net metering, increase the number of larger systems permitted, allow excess net metered generation to be considered SPEED resources, allow customers to retain credits for excess generation for longer periods, and expand the types of systems eligible for net metering.

DATED at Montpelier, Vermont, this 21st day of October, 2010.

<u>s/ James Volz</u>	)	
	)	
	)	PUBLIC SERVICE
<u>s/David C. Coen</u>	)	
	)	BOARD
	)	
	)	OF VERMONT
<u>s/ John D. Burke</u>	)	

OFFICE OF THE CLERK

Filed: October 21, 2010

Attest: s/Judith C. Whitney  
Deputy Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*